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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 4-8,10,13-20, 35-42,44,59, and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takano (US 5,984,124) in view of McBride et al. (US 6,761,275) and Kawchitch (US 3,433,380).

Takano discloses a plastic closure that comprises a plastic closure shell (6) including a base wall (1), and a peripheral skirt (2) with an internal thread (5) for securing the closure to a container finish, and a plastic disk (9) loosely retained parallel to but separate from said base wall, said disk including a flat base (15) with a peripheral portion, an axially extending protrusion (14) for engaging an undersurface of said base wall to space said disk from said base wall, and an annular ring (11) extending axially from said base adjacent to but spaced from a periphery of said disk. Takano teaches the claimed closure and container except for the resilient liner molded onto the disk **9** and an annular rib around a radially outer edge of the disk extending away from a biased wall. See column 3, lines 19-21 regarding the plastic material.

McBride teaches it is known to mold a resilient liner **40** onto a disk **30**, wherein the liner sealing material enhances the sealing effect of the liner disc with the bottle neck (Col. 1, lines 56-65).

Kawchitch teaches it is known to provide a closure disc with an annular rib **26** around a radially outer edge of said disk base extending away from a base wall for engaging the disc against a radially outer edge of a container finish when said closure is secured to the container finish and a closure shell having a bead **20** extending radially inwardly from said skirt adjacent

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to but spaced from said base wall, wherein said annular rib has a concave radially outwardly directed surface portion received over said bead. See Fig. 3.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a resilient liner molded onto the disk for engaging the mouth of an associated container and to provide an annular rib extending from the peripheral edge of the disc having a shape complimentary with the cap shell inner wall bead to provide a more effective and reliable seal between the closure cap and the container.

Regarding the liner as a barrier layer, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the resilient liner of a barrier material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Doing so maintains the integrity of the container contents against degradation. It is noted that this common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate.

Response to Arguments

3. Applicant's arguments filed March 12, 2010 have been fully considered but they are not persuasive.

It is acknowledged that none of the references alone disclose the claimed invention. Since the rejection is not one of anticipation under 35 USC 102, there is no need to argue the point. However, several features relied upon in the obviousness rejection bear repeating.

Takano teaches a threaded closure shell and a disc comprising a base protrusion and an annular projection for engaging a bottleneck rim. Montgomery is cited for its teaching of a

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liner on a sealing disc, while Kawchitch teaches a disc with an annular rib for engaging a radial outer surface of the associated container neck.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The Board of Patent Appeals and Interferences in its decision mailed August 11, 2009 agreed that hindsight reasoning was the sole rationale for the rejection.

In response to applicant's argument that there is no teaching, suggestion, or motivation to combine the references, the examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In this case, one of ordinary skill in the art at the time of the instant invention would look at all the references as prior art for their teachings.

As evidenced by Hawkins et al. and Montgomery et al. various sealing configurations are possible for a closure cap shell and sealing member. These establish one of ordinary skill in the art at the time of applicant's invention would utilize any one of a variety of known closure disc and shell combinations to seal a container neck rim in a manner necessary for best protection of the container contents, bottle construction and other factors.

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The patent to McBride clearly teaches a compressible sealing liner on a disc. Applicant argues this teaching is not applicable because the liner is not "molded" on the disc. Wherein the sealing liner is shaped onto the disc, it is considered to be molded on the disc as there is no structural difference in the finished product.

Applicant's arguments are not persuasive. The rejection stands.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

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6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

7. In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720/80 will be promptly forwarded to the examiner.

8. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday, **EXCEPT** Wednesday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
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- Inventor Assistance Center (800) PTO-9199
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